



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/166886

PRELIMINARY RECITALS

Pursuant to a petition filed June 26, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Division of Health Care Access and Accountability (Division or DHCAA) regard to Medical Assistance (MA)/BadgerCare, a hearing was held on August 11, 2015, by telephone.

The issue for determination is whether the Division's agent, MTM, correctly denied a request for the petitioner's non-emergency medical transportation (NEMT) to day treatment services, effective May 2, 2015.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED], contract manager
Division of Health Care Access and Accountability
Madison, WI

ADMINISTRATIVE LAW JUDGE:

Nancy J. Gagnon
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Green County. He is certified for MA or BadgerCare Plus.

2. The petitioner, age 9, requires mental health day treatment services. He has reactive attachment disorder, and requires intensive therapy due to his history of trauma, abuse and neglect in his birth home. He apparently began his day treatment at [REDACTED], Janesville, in March 2015. He was transported solo to [REDACTED] in an MA-paid NEMT vehicle from March 26 through May 1, 2015. He was the only rider in the vehicle during these trips.
3. The Division's NEMT agent determined that the solo trips above were authorized and paid in error. The Division has a policy of requiring that there be two unaccompanied riders under age 12 to a children's day treatment center as a condition of NEMT payment:

Topic #15697

Transportation for Minors Traveling Alone to Their Appointments

Members age 17 and younger are minors. All reservations for transportation of minors to a covered appointment must be made by an adult. Additionally, transportation of minors usually requires a parent or caretaker who assumes responsibility for the minor, accompanies the minor for the entire trip, and stays with the minor at the destination.

Some exceptions can be made to allow a minor to ride alone if a parent or legal guardian signs a consent form. ...

The following members may travel without a parent or caretaker:

- Minors age 16-17 years old when traveling by a bus or vehicle.
 - Minors age 12-15 years old with a signed consent form on file with MTM Inc. when traveling by a vehicle only.
 - Minors age 4-11 years old with a signed consent form on file with MTM Inc. when traveling by a vehicle only with at least one other child to the same day treatment program.
4. If there are not two riders to a children's day treatment center, the agent's position is that it will pay the parent for mileage costs in lieu of the NEMT. The petitioner's mother asserts that it works a hardship on her to give and find individual rides to the center. She finds it impractical to travel with the child on the NEMT vehicle, as she is employed elsewhere. She also asserts that none of the other 12 children attending [REDACTED] are from the Albany area, so there is no feasible child "ride partner" for the petitioner at this time.

DISCUSSION

The petitioner desires payment resumption of unaccompanied NEMT van trips to day treatment, where he is the only rider. The burden of proving that payment should resume rests with the petitioner.

The federal Medicaid rule has an unhelpfully generic requirement that directs state programs to provide "necessary transportation" to medical providers, with the instructions that the states describe their methods for providing/paying for such transportation in their state plans. 42 C.F.R. § 431.53. The federal rule also allows the states to contract with a transportation brokerage company to manage transportation expenses, and great latitude is given to the brokerage's management techniques. 42 C.F.R. § 440.170(a). Wisconsin has done so, and the current broker is MTM, Inc. *ForwardHealth Update*, No. 2013-32 (June 2013).

Wisconsin's state plan is available on the Wisconsin Department of Health Services website, at <https://www.dhs.wisconsin.gov/mandatoryreports/mastateplan/section3.htm>. The state plan language is not helpful to the petitioner's position. Plan Attachment 3.1-A says that medical transportation is "provided: with limitations." The limitations include a declaration that non-emergency transportation is provided through a brokerage program, and that the broker shall use a network including ambulances, SMVs, common carriers and volunteer transportation. The most significant limitation for this case is the passage on *choice of provider*:

Recipients (beneficiaries) who require transportation are provided the service by a provider selected by the broker. Recipients (beneficiaries) do not have the option of selecting a provider of their choice.

Wisconsin State Plan, Attachment 3.1-A, p.13.

However, there are other sources of authority to be reviewed – state statute, state code, and the Department's Medicaid handbook. In state statute, the legal authority pertaining to transportation payment/medical mileage reimbursement is very general:

(b) Except as provided in pars. (be) and (dc), the department shall audit and pay allowable charges to certified providers for medical assistance on behalf of recipients for the following services:


...

3. Transportation by emergency medical vehicle to obtain emergency medical care, transportation by specialized medical vehicle to obtain medical care including the unloaded travel of the specialized medical vehicle necessary to provide that transportation, or transportation by common carrier or private motor vehicle to obtain medical care.

Wis. Stat. § 49.46(2)(b)3. State code requirements for medical transportation are found at Wis. Admin. Code § DHS 107.23. These requirements are outdated, as they preceded the switch to a transportation brokerage company.

Current state Medicaid handbook policy instruction is as follows:

21.4.2 Transportation

Federal regulations require the Medicaid program provide transportation for members who have no other way to receive a ride to their Medicaid health care appointments. Transportation can be by ambulance, SMV , or common carrier.

21.4.2.1 Ambulance

Ambulance transportation is a covered service if it is provided by a BadgerCare Plus certified ambulance provider and the member is suffering from an illness or injury that rules out other forms of transportation ...

21.4.2.2 Specialized Medical Vehicle



An SMV is a vehicle equipped with a lift or ramp for loading wheelchairs. The driver of an SMV must meet driver requirements ... SMV transportation is a covered service if provided by a BadgerCare Plus SMV enrolled provider and a health care provider has

documented why the member's condition prevents him or her from using a common carrier or private vehicle.

21.4.2.3 Common Carrier

Common carrier means any mode of transportation other than an ambulance or an SMV.

21.4.2.4 Transportation Coordination

NEMT  is coordinated by the **DHS**  NEMT manager, Medical Transportation Management Inc. (MTM Inc.). As the NEMT manager, MTM Inc. arranges and pays for rides to covered Medicaid services for members who have no other way to receive a ride. Rides can include ambulance, SMV, or common carrier transportation depending on a member's medical and transportation needs. ...

Medicaid Eligibility Handbook, § 21.4.2.

None of the latter three authorities is a basis for this judge to override MTM's decision to offer mileage reimbursement in lieu of driver and van transportation of the petitioner. The State Plan explicitly says that the recipient does not have the option of selecting his transportation provider of choice. In a previous decision from this office, another judge held that the recipient could not specify the type or provider of transportation provided (public transportation reimbursement was offered instead of volunteer drivers). *See*, Decision MGE/156974 (Wis. Div. of Hearings & Appeals June 9, 2014)(DHS), by Judge O'Brien.

Dicta: Having determined that MTM's decision shall be upheld per the reasoning above, I do note that I share the petitioner's confusion over the policy rationale behind the age distinctions made in the Division's policy at [NEMT Online Handbook](#), topic #15697 (viewed in September 2015), at <https://www.forwardhealth.wi.gov/WIPortal/Online%20Handbooks/Display/tabid/152/Default.aspx>. Why is reimbursement available for a 12-year old traveling solo, while there is no reimbursement for a child under 12 traveling alone? There would seem to be no obvious cost savings or safety rationale for the distinction.

CONCLUSIONS OF LAW

1. The Department's transportation broker permissibly denied prospective payment for NEMT van services for the petitioner, because the broker proffered mileage reimbursement for car drivers instead. The petitioner does not have a choice of non-emergency transportation providers under Wisconsin's State Plan.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN

INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

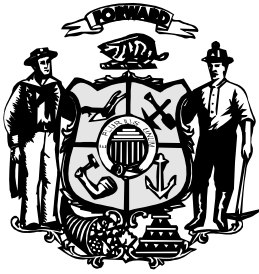
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 1st day of October, 2015

\sNancy J. Gagnon
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 2, 2015.

Division of Health Care Access and Accountability

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